

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 15th November 2022**

+ **W.P.(C) 5838/2021 & CM APPL. 44137/2021**

DHARAMVIR SINGH Petitioner

Through: **Mr. Sahil Jain, Advocate**

Versus

THE STATE (GOVT.OF NCT OF DELHI) & ANR....Respondents

Through: **Ms. Rachita Garg, Ms. Aayesh Khan
and Ms. Sachi Chopra, Advocates for
R-1
Ms. Jyoti Tyagi, Advocate for R-2**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226/227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“(a) Issue a Writ in the nature of Certiorari for Quashing/Settling aside the order dated 02.22.2021 passed by the Respondent no. 1, and/or

(b) Direct the Respondent no. 1 to decide the Application filed herein as Annexure P-2 in a fair, transparent and time bound manner by giving effective and proper opportunity of hearing to the Petitioner, and/or

(c) Direct the Respondent no. 2 to provide the alternative plot to the in lieu of the acquired land of the Petitioner as per the rules:

(d) Issue any other further order/orders or direction/directions as this Hon'ble Court may deem fit and appropriate on the facts and the circumstances of this case."

2. The land comprised in Khasra No. 7//6 (2-10), 15 (3-7), 8//10 (4-16), 11 (4-11), 12 (4-16) and 26 (0-5) in Village Shahpur Garhi, Narela, Delhi, admeasuring 20 Bighas 5 Biswas, was notified under Section 4 of the Land Acquisition Act, 1894, and was acquired. The father of the petitioner (hereinafter "predecessor-in-interest/applicant") had 1/18th share in the aforesaid land, measuring 1 Bigha 2.5 Biswas.

3. Award No. 30/79-80 dated 29th November 1979 was passed and the predecessor-in-interest, thereafter, applied for allotment of alternative plot under the Scheme dated 2nd May 1961 of Large Scale Acquisition, Development and Disposal of Land in Delhi (hereinafter "Scheme of 1961"). The said application of the petitioner's predecessor-in-interest came to be rejected vide order dated 2nd November 2021 on the ground of non-submission of documents and on the ground that the petitioner is living in village *deh abadi*.

4. Aggrieved by the rejection order, the petitioner has approached this Court seeking the aforesaid prayers.

5. Learned counsel appearing on behalf of the petitioner submitted that the application for allotment of alternative plot moved by the predecessor-in-interest remained pending for 30 years and ultimately the impugned order was passed rejecting the said application. It is submitted that the respondent no. 2 asked for certain documents at the time of filing of the application which were duly submitted by the petitioner and his father, yet the demand

was made by the respondent for submission of the documents and the application was kept pending for the same reason.

6. It is further submitted that the case of the applicant was recommended by the respondent no. 2 to the Land Acquisition Collector on 3rd January 1992 and several reminders were also subsequently sent regarding the acquisition of the land of the applicant.

7. On 26th June 1998, the respondent no. 2 directed the applicant to submit certain information which was also submitted by the petitioner. On 13th September 2000, a second notice was received by the applicant and again the documents were submitted. Thereafter, after the applicant expired, the petitioner attempted to have the case file transferred in his name and also furnished all requisite documents. It is also submitted that Notices dated 24th September 2013 and 11th June 2014 and letters dated 28th October 2015, 11th January 2016, 7th March 2016, 13th January 2017 and 31st October 2018 were also received and duly complied with by the petitioner. The petitioner on 27th November 2018 made a representation stating that he has submitted all requisite documents to the respondent no. 1 with the due receiving and a representation dated 6th November 2019 was also made by the petitioner.

8. It is submitted that a Coordinate Bench of this Court vide order dated 9th September 2021 in the instant writ petition directed the petitioner to produce documents demanded by the respondent no. 1 vide letter dated 31st October 2018, and the petitioner in compliance of the order made a representation on 13th September 2021 asking the respondent no. 1 to intimate him about the documents required.

9. It is submitted that instead of communicating the documents required, the respondents rejected the application of the petitioner and his predecessor-in-interest in an arbitrary, hasty and capricious manner based on the false report of the Tehsildar and against the mandate of the Scheme of 1961. Therefore, it is submitted that the impugned order is liable to be set aside.

10. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and the contentions made therein and submitted that there is no illegality in the impugned order passed while rejecting the application for allotment of alternative plot filed by the original applicant and thereafter followed up with by the petitioner.

11. It is submitted that the framework and intent of the Scheme as well as the requirements therein are clear and unambiguous yet the petitioner failed to comply with the same. It is also submitted that several notices were sent to the petitioner and the applicant requesting them to submit the requisite documents, however, the necessary documents were not supplied which were for essential for adjudication of the application of the petitioner. Moreover, as per the report of the Tehsildar, the petitioner was residing within the village *deh abadi*, and hence, he was not entitled for any alternative accommodation.

12. It is submitted that the impugned order has been passed considering all relevant circumstances after providing ample opportunity to the petitioner to furnish the documents required for adjudication of the

application for allotment of alternative plot. Therefore, the instant petition is liable to be dismissed for being devoid of merit.

13. Heard learned counsel for the parties and perused the record.

14. Under Article 226 of the Constitution of India, High Courts have the power to adjudicate upon an impugned order along with the power to entertain writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. While adjudicating upon an impugned order, the scope of writ jurisdiction is narrowed to examining the contents of the order which is before the Court. Any consideration beyond assessment of the impugned order, including investigation into evidence and question of facts would amount to exceeding the jurisdiction. While examining the challenge to an impugned order, the Court has to limit itself to the consideration whether there is any illegality, irregularity, impropriety or error apparent on record. The law, as has been interpreted by the Hon'ble Supreme Court, is clear that a High Court exercising its writ jurisdiction shall not appreciate evidence and must not interfere in the order impugned unless there is a gross illegality or error apparent on the face of record. Hence, this Court will also limit itself to the question of law and the contents of impugned order.

15. This Court has perused the impugned order bearing No. F.33(35)/9/1989/L&B/ALT/2627 dated 2nd November 2021 and finds it apposite to look at the contents of the same for proper adjudication of the matter. The relevant portion of the impugned Order is reproduced hereunder:-

"Whereas, an application has been received from Sh. DHARAMVIR SINGH S/O KHEM CHAND, Ro H.No.29. Shahpur Garhi, Narela, Delhi-40 on 18.08.87 for allotment of alternate plot as per Government policy in lieu of acquisition of land of village SHAHPUR GARHI vide Award No.30/79-80.

Whereas, Committee observed that notice dated 13.10.2017 was issued to the applicant to submit the requisite documents. Further, an opportunity of personal hearing was also provided to the applicant on 24.02.2018. Also two Public Notices dated 13.05.2018 and 23.08.2018 were also published in two dailies i.e. Hindi and English to submit the requisite documents within the period of one month.

Whereas, Committee also observed that the concerned Tehsildar has also inquired into the matter and submitted his report stating therein that claimant is residing in village Deh Abadi.

Whereas, Hon'ble Supreme Court in the judgement in Civil Appeal No. 8289/2010, 8290/2010 of Delhi Development Authority V/s Jai Singh Kanwar has held that "the object of the scheme is that when the land owned by a person is taken away in entirety and he is left without any house or plot, he should be allotted a plot. The Scheme therefore provided that only a person who does not own a house/residential plot/flat will be entitled to apply."

Whereas, The Hon'ble High Court of Delhi in WPC no. 12306/15 titled as Surinder Singh Mann Vs. Govt. of NCT of Delhi decided on 25.08.2017 that "The Policy of the Government as is evident from the scheme was to provide residential plots to farmers whose land has been acquired: it was a rehabilitative measure: meaning thereby that it was to rehabilitate those farmers whose land has been acquired as they has become homeless or landless. In the instant case, the land of the petitioner has been acquired: yet before his allotment could be processed, the wife of the petitioner has acquired a property in her own name meaning thereby that

clause 3 (highlighted supra) created a hurdle in the case of the petitioner and since his wife already owned a plot in her name on the date when the allotment was to be issued. the petitioner was not entitled to an alternate plot. It is also not the case of the petitioner that his wife was not dependent on him".

In view of the position mentioned above, the District Level Recommendation Committee has decided not to recommend the case of Sh. DHARAMVIR SINGH S/O KHEM CHAND R/o H.No.29, Shahpur Garhi, Narela, Delhi-40 due to non-compliance of above mentioned notices. public notice and non-submission of requisite documents and claimant is residing in village Deh Abadi."

16. In the instant matter, the relevant conditions, which became the ground for rejection of petitioner's application, were that, *first*, he holds land in village *deh abadi* area and was not landless and, *secondly*, that despite several notices being served to him and being published in the two dailies, he did not provide the requisite documents for consideration of his application.

17. The condition of holding a plot/residential accommodation being a bar for consideration of application of allotment of alternative plot is bar which finds mention in the first as well as the subsequently modified version of the Scheme of 1961. This bar is also applicable in cases where the entire land of the applicant has not been acquired or where certain portion of the applicant's land remains in Lal Dora.

18. The Scheme for Large Scale Acquisition Development & Disposal of Land in Delhi came into force on 2nd May 1961 and has been modified from time to time and not only provided for measures for controlling value in urban areas but also largely regulated the conditions stipulated for

acquisition, development and disposal of land. The objective of the Scheme of 1961 suggests as under:

“The scheme of providing developed residential plots to farmers whose lands are acquired for planned development of Delhi is a rehabilitation measure”

19. This objective has also been reiterated by this Court as well as the Hon’ble Supreme Court in various cases. A coordinate bench of this Court in ***Jai Singh Kanwar vs. Union of India, 2008 SCC OnLine Del 492***, made the following observations:-

“7.2 Giving its imprimatur to the policy the Full Bench in Shiv Devi Viriley explained the rationale for the policy was to see that the population of Delhi is properly housed and has the means for acquiring residential houses and further that if a person has bought a residential plot privately and the State chooses to acquire that land at a very meagre price, then surely it is the duty of the State to give an alternative plot at a moderate price to those persons who have been deprived of possible residential houses, which they could have constructed on the land they have acquired”

20. Further, in ***Surender Singh Mann vs. Government of NCT of Delhi, W.P.(C) 12306/2015***, decided on 25th August 2017, a Coordinate Bench of this Court observed as under:-

“7 At this stage, it would also be useful to extract the eligibility criteria of the Government which had been approved by the Government of NCT of Delhi in the year 1961 dealing with allotment of alternate plots. The object of the scheme reads as under:-

“The scheme of providing developed residential plots to farmers whose lands are acquired for planned development of Delhi is a rehabilitation measure”

8 The object thus clearly being to provide developed residential plots to farmers whose land had been acquired for the planned development of Delhi; this being a rehabilitative measure.

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12 The Policy of the Government as is evident from the scheme was to provide residential plots to farmers whose land had been acquired; it was a rehabilitative measure; meaning thereby that it was to rehabilitate those farmers whose land had been acquired as they had become homeless or landless.”

21. In ***State of M.P. vs. Narmada Bachao Andolan***, (2011) 7 SCC 639, the Hon’ble Supreme Court elaborated on the general principle and provisions for rehabilitation and observed as under:-

“Land acquisition and rehabilitation : Article 21

26. It is desirable for the authority concerned to ensure that as far as practicable persons who had been living and carrying on business or other activity on the land acquired, if they so desire, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on the terms settled with due regard to the price at which the land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case.

27. In certain cases, the oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of employment,

housing, investment opportunities, and identification of alternative lands.

“10. ... A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens.” (Mahanadi Coalfields Ltd. case [Mahanadi Coalfields Ltd. v. Mathias Oram, (2010) 11 SCC 269 : (2010) 4 SCC (Civ) 450 : JT (2010) 7 SC 352] , SCC p. 273, para 10)

For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic. (Vide State of U.P. v. Pista Devi [(1986) 4 SCC 251 : AIR 1986 SC 2025] , Narpat Singh v. Jaipur Development Authority [(2002) 4 SCC 666 : AIR 2002 SC 2036] , Land Acquisition Officer v. Mahaboob [(2009) 14 SCC 54 : (2009) 5 SCC (Civ) 297] , Mahanadi Coalfields Ltd. v. Mathias Oram [Mahanadi Coalfields Ltd. v. Mathias Oram, (2010) 11 SCC 269 : (2010) 4 SCC (Civ) 450 : JT (2010) 7 SC 352] and Brij Mohan v. HUDA [(2011) 2 SCC 29 : (2011) 1 SCC (Civ) 336] .) The fundamental right of the farmer to cultivation is a part of right to livelihood. “Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity.” India being a predominantly agricultural society, there is a “strong linkage between the land and the person's status in [the] social system”.

22. Hence, it is evident that the Scheme of 1961 was introduced as a means to provide for those whose land is acquired for the purposes of development and to ensure that such persons are not rendered homeless or landless in the event of such acquisition.

23. The process for allotment of alternative plot is outlined under the Scheme of 1961. It provides for eligibility criteria as well as conditions and procedures one needs to follow while applying for allotment of alternative plot. The Scheme provides for conditions under paragraph 10, which were updated and modified with time and as per requirements. These conditions acted as eligibility criteria for the land owners whose lands were acquired and who became entitled to be considered for allotment of alternate plot, subject to the conditions laid.

24. These conditions which stood under paragraph 10 of the Scheme are reproduced hereunder:-

“10. The following conditions shall govern the allotment of land whether by auction or otherwise to individuals (including those whose land has been acquired):

a) No plot should be allotted to any person, who or whose wife/husband or any of his/her dependent relations including unmarried children owns a house or residential plot of land in Delhi, New Delhi or Cantonment. The question of making an exception in the case of persons living in a congested locality or whose family has out-grown should be considered after some experience has been gained of the working of the scheme.

b) The allottee of a plot should be required to construct the house in accordance with the sanctioned plans within two years of the date of allotment, failing which the land would be liable to be resumed.

c) The allottee of a plot shall not sell or transfer his rights in the plot or part thereof for a period of 10 years from the date of allotment except with the previous approval of the Chief Commissioner which will be given only in exceptional circumstances. Thereafter the permission to sell will be given to the Chief Commissioner. In both the cases, 50% of the unearned

increase in the value of the plot will be paid to the Government before the transfer is permitted.....”

25. The Division Bench of this Court in ***Government of NCT of Delhi vs. Veerwati***, 2012 SCC OnLine Del 1444, and its connected LPAs, held that there are four requisite conditions for consideration while filing and adjudicating the application for allotment of alternative plot. The relevant portion of the judgment is reproduced hereunder:-

“3. In the year 1961 the Government formulated the scheme for allotment of alternate plots to those land owners whose land is acquired for planned development of Delhi and the land so acquired is placed at the disposal of the DDA. The allotment of alternate plot under this policy was subject to his satisfying, beside others, following conditions:—

a) The application must have been filed within a period of one year from the date of receipt of the compensation.

b) He should be recorded owner of the acquired land prior to the date of issuance of the Notification under Section 4 of the Act.

c) He must have received the compensation for the said land as a rightful owner and the possession of the acquired land has been taken by the Government.

d) Neither he nor his spouse nor any of his dependent children own any residential property in Delhi.”

26. The conditions stipulated in this matter have stemmed from the Scheme of 1961 and its subsequent amendments and hence, have to be given foremost importance while making an application for allotment of alternative plot and while its consideration by the concerned authority.

27. In the instant case, the case of the petitioner and his predecessor-in-interest was considered by the concerned authority and to evaluate the eligibility of the petitioner for allotment of an alternative plot the necessary actions were carried out. Accordingly, the Tehsildar, who was the most competent authority to investigate into the matter, found that the petitioner was residing in village *deh abadi*. Therefore, evidently, the petitioner was not landless after the land of his predecessor-in-interest was acquired.

28. An examination of the objective of the Scheme read with the observations made in the abovementioned judgments of the Hon'ble Supreme Court as well as this Court, definitively and unambiguously indicate that the Scheme of 1961 is targeted to those individuals, villagers, farmers etc. who may be rendered homeless or landless upon their land being acquired by the Government, or any Authority under it, for the purposes of development. The very structure of the Scheme suggests that it is a welfare and rehabilitative measure for those affected by the actions taken in the process of development of the State of NCT of Delhi. Being considered for compensation, whether monetary or in the form of alternate plot, is an entitlement which is available to individuals who fulfil the criteria provided for under the Scheme. Those who lose their homes or their agricultural lands, that are the only source of their livelihood, are the beneficiaries of schemes like these and rightly so need to be facilitated as soon as possible. Such individuals, owners, villagers, farmers and their families cannot and should not be left remediless after their land is acquired. However, it should also be borne in mind that in garb of such welfare schemes, those who have alternative and effective means of sustaining a life

do not take unfair advantage of the schemes and welfare provisions of the Government and its Authorities. Keeping in mind the objective of the Scheme, it is found that enforcing an eligibility criterion for consideration of application of allotment of alternate land is not unreasonable or unfair and is in fact required for ensuring that the active and effective measures reach those who are in need.

29. Since, the very purpose of the scheme for allotment of alternative plot is to provide for those who do not have any land left, residential or agricultural, subsequent to their land being acquired, and even the conditions laid under the Scheme provide for the ineligibility on account of ownership of a land, it is found that the case of the petitioner does not fulfil the eligibility criteria and hence, he was rightly found not entitled to the alternative accommodation under the Scheme.

30. A perusal of the impugned order also shows that the second ground taken while rejecting the application of the petitioner is that certain requisite documents were not submitted by the petitioner or his predecessor-in-interest despite several reminders and notices. The Scrutiny Committee, had issued and served a notice to the petitioner to provide an opportunity of personal hearing in the matter on 24th February 2018. However, the petitioner failed to appear on the said date. It is also evident that two Public Notices dated 13th May 2018 and 23rd August 2018 were also published in two dailies in Hindi and English to submit the requisite documents within the period of one month. However, as per the record, the documents were not submitted by the petitioner. Accordingly, since the petitioner did not submit the requisite documents despite two notices and a public notice, the

District Level Recommendation Committee decided not to recommend his case due to non-compliance of above mentioned notices, public notice and non-submission of requisite documents.

31. The petitioner has not been able to prove his case for being considered for the allotment of alternate land because of the deficiencies and inaction on his part. The petitioner was granted opportunity at several occasions for submissions of requisite documents and personal hearing for his case being considered under the Scheme through personal notices as well as through public notice. However, the petitioner failed in appearing before the authorities and submitting the requisite documents.

32. The petitioner was granted opportunity for submission of requisite documents for his case to be considered under the Scheme by means of a public notice as well. Public Notice is one important means of notification to the citizens at large or to a section of stakeholders regarding a proceeding ongoing before an authority. The ordinary business practice is to publish the public notice in two different languages in widely-circulated newspapers, and containing all necessary information. The said notice must be archivable, accessible and verifiable. Accordingly, in the instant case, the public notice made shall be considered to be deemed notice to the petitioner. Therefore, even if, for the sake of argument, the earlier notices are deemed not to be served, the public notice issued in newspapers in two languages – i.e. English and Hindi, shall be deemed to be a valid service, and accordingly the petitioner cannot claim the benefit of being unserved.

33. Keeping in view the observations and discussions in the foregoing paragraphs and the facts and circumstances, it is found that there is no error apparent on the face of record or any gross illegality in the impugned order dated 2nd November 2021 bearing No. F.33(35)/9/1989/L&B/ALT/2627 passed by the concerned authority while deciding the application for allotment of alternative plot. The petitioner was not rendered landless after the land of the father of the petitioner was acquired and moreover, the petitioner despite several notices failed to furnish the necessary documents required for consideration of his application.

34. Therefore, this Court does not find any merit in the instant petition since the petitioner cannot claim a benefit that does not accrue to him. Accordingly, the instant petition is dismissed. Pending applications, if any, also stand dismissed.

35. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 15, 2022
gs/ms